

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

AL BEAMER, et al.,)	Civil Action No.: C-1-02-013
)	
Plaintiffs,)	Judge Spiegel
)	
v.)	
)	DEFENDANTS' MOTION FOR LEAVE TO
NETCO, INC., et al.,)	FILE DISPOSITIVE MOTION IN EXCESS
)	OF PAGE LIMIT PROVIDED FOR BY
Defendants.)	LOCAL 7.2(a)(3) WITH MEMORANDUM
)	IN SUPPORT

Defendants hereby move this Court for an Order granting them leave to file a Motion For Summary Judgment in excess of the page limit for memoranda provided for by the Local Rules of this Court. For the reasons set forth in the attached Memorandum, Defendants' Motion should be granted.

Respectfully submitted,

s/Jacqueline Schuster Hobbs
Jacqueline Schuster Hobbs (68236)
Donald J. Mooney, Jr. (14202)
ULMER & BERNE LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202
(513) 762-6200
(513) 762-6245 (Fax)
jhobbs@ulmer.com
dmooney@ulmer.com
Attorneys for Defendants

OF COUNSEL:

Gregory A. Shoemaker (94185)
McMAHON, BERGER, HANNA,
LINIHAN, CODY & McCARTHY
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
(314) 567-5968P (Fax)
shoemaker@mcmahonberger.com

MEMORANDUM

This litigation, which alleges tortious interference with a contract and abuse of process, was brought by Plaintiffs against Defendants, for allegedly tortiously interfering with a contract with a third party, a former partner of Defendant John Baumgart and a former owner of Defendant NETCO, and for allegedly abusing the process associated with a former lawsuit involving Defendants and another entity in which Plaintiff Al Beamer had an ownership interest.

With respect to Defendants, Plaintiffs' Complaints presents two (2) issues for each Defendant, NETCO and John Baumgart, for the Court's resolution: (1) Did NETCO and/or John Baumgart tortiously interfere with Plaintiffs' contract with Trans Continental Title by causing Trans Continental Title, which is owned wholly by Defendant John Baumgart's brother, to terminate its contractual relationship with Plaintiffs; and (2) Did Defendant NETCO and/or Defendant John Baumgart abuse the process by initiating contempt Motions in a prior case, National Equity Title Agency, Inc. v. Antonio Rivera, et al., Case No. A9906815, in the Court of Common Pleas in Hamilton County, Ohio, which although initiated legitimately, was perverted to procure collateral advantages not properly involved in the suit itself for improper purposes.

Rule 7.2(a)(3) of the Local Rules of this Court contains a twenty (20) page limit on all Memoranda. S.D. Ohio Civ. R.7.2(a)(3). In order for Defendants to provide the Court with the full sequence of events relative to this litigation, the Court must be provided with a factual history of the prior lawsuit, as referenced above, regarding the abuse of process claim and a factual history of the parties involved in the claim for tortious interference of a contract. Accordingly, Defendants will necessarily require an extension of that page limit for their Motion For Summary Judgment. For that purpose, Defendants propose that they be granted leave to file

a Motion For Summary Judgment not to exceed fifty (50) pages in length, which includes a Statement of Uncontroverted Material Facts in this matter. If leave of Court is granted, Defendants will comply with the table of contents and summary requirements, as well as all other mandates of Local Rule 7.2(a)(3).

In further support of its Motion, Defendants submit that many, if not all, of the facts in this litigation are not in dispute. Defendants also anticipate that Plaintiffs may file their own Motion For Summary Judgment or at least move for partial Summary Judgment. By permitting the parties to fully brief the factual and legal issues in their respective Motions For Summary Judgment, the Court may be able to dispose of this litigation in its entirety. At a minimum, the parties' Motions For Summary Judgment should have the effect of considerably narrowing the issues that ultimately will be tried to this Court, thereby making dispositive motion practice the most practical and efficient means for dealing with this litigation and the issues raised by Plaintiffs' Complaint.

For the foregoing reasons, Defendants respectfully request that this Court grant this Motion and enter an Order permitting them leave to file a Motion For Summary Judgment not to exceed fifty (50) pages in length.

Respectfully submitted,

s/Jacqueline Schuster Hobbs
Jacqueline Schuster Hobbs (0068236)
Donald J. Mooney, Jr. (0014202)
ULMER & BERNE LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202
(513) 762-6200
(513) 762-6245 (Fax)
jhobbs@ulmer.com
dmooney@ulmer.com
Attorneys for Defendants

OF COUNSEL:

Gregory A. Shoemaker (94185)
McMAHON, BERGER, HANNA,
LINIHAN, CODY & McCARTHY
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
(314) 567-5968P (Fax)
shoemaker@mcmahonberger.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served by regular U.S. mail, first class, postage prepaid, upon Richard C. Haber, Esq., REMINGER & REMINGER, Attorney for Plaintiffs, 1400 Midland Building, 101 Prospect Avenue, West, Cleveland, Ohio 44115-1093, this 23rd day of December, 2003.

s/Jacqueline Schuster Hobbs